IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.65 of 2006

Judgment reserved on 7.3.2007

Date of decision 12.04.2007

Sanjeev Kumar alias Sanju Appellant

Versus

State of H.P. Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1]

For the appellant : Mr.Ajay Sharma, Advocate.

For the respondent: Mr.Ashutosh Burathoki, Addl. Advocate General.

V.K.Ahuja, J.

This is an appeal filed by the appellant against the judgment of the court of learned Sessions Judge, Una dated 28.2.2006, vide which the appellant was held guilty and sentenced to rigorous imprisonment for six years and a fine of Rs.10,000/- for the offence under Section 376(2)(e)(g) IPC and rigorous imprisonment for three years and a fine of Rs.3,000/- for the offence under Section 452 IPC . In default of payment of fine imposed under Section 376(2(e)(g) IPC the convict was ordered to undergo further rigorous imprisonment for six months and in default of payment of fine imposed under Section 452 IPC, the convict was ordered to undergo imprisonment for two months. The sentences of imprisonment were ordered to run concurrently.

Briefly stated the facts of the case are that a report was lodged on 24.3.2005 with the police by one lady aged 23 years that she along with her husband Munna are living in village Charatgarh and are working as labourers in the orchard of one Jaidev Bhardwaj. The said owner has also given them a place to live and she was living there alongwith her husband

---

[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

and two children. On 22.3.2005 at about 11 p.m. somebody knocked at their door and when her husband opened the door he found that three boys were standing outside and one of them pulled her husband outside while the remaining two boys, namely, Sanjay and Ram Pal residents of village Khanpur came inside. They caught hold of her and tore her clothes and threw her on the ground and committed rape with her one after the other. Her husband raised an alarm and while leaving the place they gave a threat to them that in case some person was told about the incident they would be killed. It was further alleged by the complainant that on the next day her husband went to the house of accused persons made a complaint but no action was taken and again the accused on the next night tried to break the door of their house. Today in the morning her husband contacted the owner Jaidev Bhardwaj at Chandigarh who deputed one Raman Kumar to help them and she had come along with her husband and said Raman Kumar to lodge the report. On this report a case was registered and the case was investigated. During investigation of the case, the medical examination of prosecutrix was conducted by PW-1 Dr.(Mrs.)Shanta Rana who gave her detailed report and reported that there was nothing to suggest that the prosecutrix had not been subjected to sexual violence. The accused persons were also got medically examined by PW-2 Dr.Yogeshwar Ram Rabi. After completion of investigation, challan was filed against the appellant and two other accused persons. The appellant and two other accused were tried by learned trial court and on conclusion of the trial all the three accused persons were held guilty and convicted and sentenced as detailed above. This appeal has been preferred by one of the accused, namely, Sanjeev Kumar @ Sanju.

I have heard Mr.Ajay Sharma, learned counsel for the appellant and Mr.Ashutosh Burathoki, learned Additional Advocate General, for the respondent and have also gone through the record carefully.

The submissions made by learned counsel for the appellant were that the occurrence had taken place on the night of 22.3.2005 at about 11 p.m. But the report was lodged with the police on 24.3.2005 at 8.30 p.m. Thus there has been a delay of two days which has not been satisfactorily explained by the prosecution and the same proves fatal and prosecution story therefore cannot be believed. The next plea taken by learned counsel for the appellant was that a plea was taken by the prosecutrix in her statement that her clothes were torn by the accused persons at the time of commission of the offence but there are no such observations of the trial court that the clothes of the prosecutrix were also torn and therefore her statement does not find corroboration from the clothes produced during the trial of the case. It was also submitted that since the accused persons were not known to the prosecutrix prior to the commission of the offence and as such test identification parade was necessary and since no identification parade was conducted and the accused were identified by the prosecutrix for the first time in the court only as such the identity of the accused persons cannot be said to have been established.

On the other hand, the learned Additional Advocate General for the State had submitted that there has been no delay in lodging of the FIR which has been satisfactorily explained by the prosecutrix and her husband as well. In regard to the plea that the clothes were torn it was submitted that the clothes were produced before this court and there is observation of this court that the clothes were torn which gives corroboration to the testimony of prosecutrix. In regard to the identity of the accused persons it was submitted that test identification parade is not necessary in every case and once the names of two of the accused persons were already known to the complainant and the third name she had learnt subsequently and therefore there is no dispute in regard to the identity of the appellant and as such the findings of learned trial court

which are based on correct appreciation of evidence and law are liable to be affirmed.

Coming to the first plea raised in regard to delay in lodging of FIR, the learned counsel for the appellant had not placed reliance on any decision. On the other hand, learned Additional Advocate General in support of his submissions that there was no delay and it has also been explained , had relied upon the following decisions:

The decision **State of Punjab vs. Gurmit Singh and others**, AIR 1996 SC 1393 shows that in regard to the delay in lodging of the report in a case under Section 376 IPC the following observations were made by their Lordships which are relevant and are being reproduced below.

> " (b)…. In sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complaint about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. Even if there is some delay in lodging FIR in respect of offence of rape, if it is properly explained and the explanation is natural in the facts and circumstances of the case, such delay would not matter."

The decision in **State of Rajsthan vs. N.K.,** AIR 2000 SC 1812, shows that the following observations were made by their Lordships in regard to a case under Section 376 IPC and the observations made are relevant and as such are being reproduced below:

> " A mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the court it cannot be counted against the prosecution.
>
> In that case of rape, the prosecutrix was a married woman and was living with her parents according to custom and was a virgin prior to the commission of crime and FIR was lodged with delay due to the fear that her husband and in-laws on knowing the incident would refuse to carry the girl to reside with them and along

> with that there was a communal tinge to the whole of incident and complainant was prevented from lodging FIR by community fellows of accused and such facts found mention in FIR also inasmuch as complainant stated in FIR that the delay in lodging report was due to village panchayat, insult and social disrepute, it was held that the delay in lodging FIR was satisfactorily explained."

I may make a reference to another decision of Hon'ble Apex Court in **State of Himachal Pradesh vs. Gian Chand**, AIR 2001 SC 2075, the observations made therein are relevant and are being reproduced below.

In that case the appeal was filed against the order of acquittal passed by this High Court. The occurrence had taken place on 29.10.1991 in the evening whereas the FIR was lodged on 31.10.1991 in the morning. In regard to the delay it was observed by their Lordships as under :

> "Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

Coming to the explanation given by the prosecutrix and her husband in regard to the delay, the prosecutrix has been examined as PW-5 who stated that she came to know of the names of the accused on the next date i.e. 23.3.2005. On next day her husband complained to the parents of the accused persons but they did not pay any heed. Her husband then informed Jaidev Bhardwaj who was their landlord and he was residing at Chandigarh at the time of incident and was informed on telephone. He deputed one of his relatives, namely, Raman resident of Dehlan village to assist them . On March 24,2005 when they were going to Police Post Mehatpur to lodge report of the occurrence, a police party met

them at Basdehra village and she gave her statement under Section 154 Cr.P.C. Ex.PW-5/A before one of the police officer.

In regard to the delay her husband who was examined as PW-6 stated that on the following day he came across the accused persons on the road and narrated the entire incident to their parents who begged apology saying that there would be no repetition of the occurrence and that he should not take any action. On the night following the night of occurrence, the accused persons again emerged at the door of the aforementioned house and threatened him, they also complained as to why he had revealed the incident to their parents. He did not open the door under fear. On the third day of occurrence he informed the employer about the incident on telephone. He advised him to report the matter to the police and deputed his relative Raman to assist him in the matter. He stated that their house is situated at an isolated place and there is no residential house in the neighbourhood. When they were going to Police Post Mehatpur to lodge the report of occurrence the Police met them on way and recorded the statement of his wife.

The submissions made by learned counsel for the appellant in regard to delay were that the holi in the year 2005 was on 26.3.2005 and a judicial notice of this fact can be taken and since the prosecutrix as PW-5 has stated that the occurrence had taken place three days prior to holi the date of occurrence comes to 23.3.2005. On the other hand, the husband of the prosecutrix as PW-6 has stated that the occurrence had taken place two days prior to holi which comes to 24.3.2005. No judicial notice of the fact can be taken that holi was on 26.3.2005 since it was for the accused to bring on record the exact date of holi if he wanted to take some benefit of the statements made by the prosecutrix and her husband. According to the prosecutrix the occurrence took place three days prior to holi, while her husband stated that it took place two days prior to holi and therefore even assuming that holi was on 26.3.2005 which fact does not stand established **than** the occurrence had taken place accordingly on

23.3.2005 or 24.3.2005. In case the occurrence had taken place on either dates of the two days and if the report has been lodged on 24.3.2006 even then it is clear that it was lodged within one day or two days of the occurrence. The prosecuturix and her husband are poor labourers of Ahrori village in Hardoi District (U.P.) and about 5 months prior to holi in March, 2005 they had come to village Charatgarh to earn their livelihood. They had no local support to help them for lodging a report against the accused persons who were residents of Una. Therefore the prosecutrix's husband gave a telephone call to his employer who deputed one of his relatives, namely, Raman and while all of them were going to police post for lodging report, they met police official on the way who recorded the statements of prosecutrix under Section 154 Cr.P.C. Ex.PW5/A in which mention of relative accompanying both of them is also there. The very fact that the said employer or his relative who accompanied the prosecutrix and her husband at the time of lodging of the report were not examined by the prosecution is not sufficient to hold that these statements cannot be relied upon. It is natural that said employer of the prosecutrix's husband and his relative would be quite reluctant to give and depose against the residents of same village or in favour of the prosecuturix and her husband who are poor labourers from State of U.P. with whom these persons had no connection. Therefore non examination of these witnesses does not affect the credibility of the statements made by prosecutrix and her husband explaining the delay in lodging of the FIR.

The plea in regard to late lodging of FIR was also taken before the learned trial court which discussed the evidence and rightly held that the delay has been satisfactorily explained. The decision of the Hon'ble Apex Court referred to above also clearly show that the facts of each case are to be considered and explanation given by the prosecutrix and her husband appears to be genuine and they made efforts firstly of making a complaint to the parents of the accused persons, then they took assistance of their employer and then lodged the report. They must have

been under a fear also since as per evidence of the prosecutrix and her husband they had been given threat also by accused persons. Thus keeping in view the evidence, facts and circumstances of the case, I am of the opinion that there has been no delay in lodging the FIR and whatsoever delay was there has been satisfactorily explained and it does not affect credibility of the prosecution story. The contention put forth by learned counsel for the appellant is repelled being devoid of any force.

Coming to the second plea raised by learned counsel for the appellant, that the clothes of the prosecuturix were not torn though she had stated so in her statement Ex.PW5/A. The prosecutrix mentioned this fact of toring of her clothes in her statement Ex.PW5/A made to the police and in her statement as PW-5 she again stated that her clothes were torn which she was wearing at that time. The sealed packet containing the clothes was produced in trial Court and shirt Ex.P-1, Salwar Ex.P-2 and sweater Ex.P-3 were produced from a sealed parcel and these were identified by the prosecution as Ex.PW1 to PW3. No questions were put up in her examination as to whether the clothes were torn or not. But since this plea was taken during the course of arguments before this Court, the clothes were summoned from the Police Station and were inspected by the Court and inspection note was also recorded on 2.1.2007. It was observed at that time that the packet in which the clothes were kept was not resealed when produced in court. It was required of the learned trial court to have got the packet of the clothes resealed after these were given to the police after exhibiting them in court. The relevant date of examination by the court would have been the date when they were produced before trial court from a sealed parcel. In case no observation was made by learned trial court at that time, it cannot be said that since the clothes were not resealed when produced in this court it affects the merits of the case. It was observed that the shirt was torn from the side with a few holes on the front portion of the lower side and this may be because of the shirt being very old, but in regard to the salwar it was

clearly observed that it was torn to good extent at place covering private parts. The sweater was not torn but appears to be old one with some minor holes. The fact that the salwar was torn at place covering private parts clearly shows that the statement of the prosecutrix finds corroboration from the clothes produced in court and the statement of the prosecutrix cannot be disbelieved simply because the condition of the clothes was not observed by learned trial court at the time these were produced in the court. Therefore it cannot be said that the statement of the prosecutrix was unreliable once she has stated that her clothes were torn at that time by the accused persons. The contention put forth falls squarely on the ground and is rejected accordingly.

The last plea and the main plea taken by learned counsel for the appellant was in regard to the test identification parade. The submissions made as mentioned above were that it was necessary for the police to have got test identification parade conducted particularly when the accused persons were not known to the prosecutrix and her husband prior to occurrence. In support of his submissions, learned counsel for the appellant had place reliance upon the following decisions.

The decision in **Shaikh Umar Ahmed Shaikh and another vs. State of Maharashtra,** (1998)5 SCC 103 shows that in para 8 the following observations were made by their Lordships which are being reproduced below:

> “No doubt, the evidence of identification parade is not substantive evidence, but its utility is for purposes of corroboration. In other words, it is utilized for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. The real and substantive evidence of the identity of the accused comes when witnesses give statement in the court, identifying the accused. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the

> Court lost all its value and could not be made the basis for recording conviction against the accused. Since convictions of the appellants have been recorded by the designated Court on wholly unreliable evidence, the same deserves to be set aside. “

The decision in **State of Maharashtra vs. Sukhdev Singh and another,** (1992)3 SCC 700 shows the observations made in paras 17 and 25 are relevant and are being reproduced below :

> “Great care must be exercised before acting on a belated identification in court by a witness who cannot be said to be an independent and unbiased person. In the case of total strangers, it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. In the present case it was all the more difficult as indisputably the accused persons had since changed their appearance. Test identification parade, if held promptly and after taking the necessary precautions to ensure its credibility, would lend the required assurance which the court ordinarily seeks to act on it. In the absence of such test identification parade it would be extremely risky to place implicit reliance on identification made for the first time in Court after a long lapse of time and that too a persons who had changed their appearance.”

Reliance was placed upon the decision in **Budhsen and another vs. State of U.P.**, 1970(2) SCC 128, wherein it was observed that the High court does not seem to have correctly appreciated the evidentiary value of these parades though they were considered to be the primary evidence in support of the prosecution case. The evidence in regard to identification was discarded by their Lordships as legally infirm and which does not connect the appellant with the alleged offence it cannot by itself sustain the conviction of the appellants.

The decision in **Kanan and others vs. State of Kerala**, 1979 SCC (Cri.) 621 shows that following observations were made by their Lordships in regard to test identification parade.

> "Where a witness identifies an accused who is not known to him, in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held, then it will be wholly unsafe to rely on his testimony regarding the identification of an accused for the first time in Court."

The learned Additional Advocate General had relied upon the following decisions in support of his submission that non holding of test identification parade does not prove fatal in the present case.

The decision in **Simon and others vs. state of Karnataka**, (2004)2 SCC 694 shows that it was observed by their Lordships that neither investigating agency is obliged to hold nor accused had right to claim parade. Further, question of identification arose where accused is not known to the witness. It was further observed by their Lordships that generally sole testimony of witness in court identifying the accused who is a stranger to them is of weak character and court insists on corroboration. But this is only a rule of prudence and whether such testimony can form the basis of conviction without corroboration depends upon facts and circumstances of each case where an accused is known to one of the witnesses who identified him in court and other witnesses corroborated his testimony, conviction can be based on such evidence.

The decision in **Malkhan Singh and others vs. state of M.P**., (2003)5 SCC 746, it was held that failure to hold a T.I. parade would not make inadmissible the evidence of identification in court. T.I. parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the TI parade provides corroboration to the sworn testimony of the witnesses in court as to the identity of the accused. In appropriate cases, the court may accept the evidence of identification in court even without insisting on such or other corroboration.

In that case a gang rape was committed by three persons on a school teacher in broad daylight. It was observed that the prosecutrix had abundant opportunity to notice the features of the accused persons. Further, on account of traumatic and tragic experience of the prosecutrix, the faces of the appellants must have got imprinted in her memory. Hence the chance of mistaken identity was remote. The evidence of prosecutrix was found to be implicitly reliable and it was held that the identification of the appellants by the prosecutrix in court did not require further corroboration. There was a delay of about 10 days in lodging the FIR which was held to be satisfactorily explained.

In the light of the above decisions it has to be seen in the present facts as to whether test identification parade was necessary and as to whether the identity of the appellant was clearly established or not and the statement of the prosecutrix in this regard can be relied upon or not.

From a perusal of the plethora of decisions relied upon by learned counsel for the appellant, it is clear that in case the accused is not known to the witnesses the T.I. parade can be said to be necessary for the purpose of identification of the accused. However, the failure to hold the T.I. parade in all such cases does not lead to the inference that the evidence of the prosecution witnesses inadmissible since the evidence of T.I. parade do not constitute substantive evidence. Thus the substantive evidence is identification in court. However, the decision in Malkhan Singh's case (supra) of the Hon'ble Apex Court is very clear that on account of traumatic and tragic experience of the prosecutrix, the faces of the appellants in that case as observed must have got imprinted in her memory. It is not a case where the prosecutrix had seen the appellant only for a second or a few minutes but she had been subjected to rape by the appellant and therefore had sufficient opportunity to observe about the distinctive features.

Coming to the evidence, it is clear from a perusal of the statement of PW-5 the prosecutrix that accused Mohinder Singh pulled her husband

out of the door and threatened her with life, whereas the rape was committed by the appellant and his co-accused and I am concerned with the evidence in regard to the appellant Sanjeev Kumar since appeal has been preferred by him. Coming to the first report lodged by the prosecuturix in her statement under Section 154 Cr.P.C. Ex.PW5/A she had clearly named the appellant who entered her room along with his co-accused, tore her clothes and committed rape one after the other. She clearly stated that the appellant and his co-accused are residents of Khanpur village. In her further statement she had clearly stated that her husband had gone on the next day to the house of the accused persons and made a complaint to their parents who did not take any action. Thereafter their employer deputed one Raman to assist them and the report was lodged. It is clear from this report itself that her husband was aware about the identity of the accused persons and therefore had gone to their houses and met their parents also. In her statement in court as PW-5 she reiterated that the appellant had entered her room. She admitted that at that time she was not aware of the names of the accused persons but she identified them by their appearance. She clearly stated on oath that she learnt about their names on March 23,2005 and on the next day her husband complained to the parents of the accused persons. Her husband was examined as PW-6 and he reiterated that the appellant and his co-accused had entered the room. He further stated that on the following day he came across the accused persons on the road and narrated the entire incident to their parents who begged apology saying that there would be no repetition of the occurrence. On the night following night of occurrence the accused persons again emerged at the door of their house and threatened them with life as to why they had revealed the incident to their parents.

Apart from the above, there is statement of PW-9 Madan Lal S.I. who was the I.O. in this case that he apprehended the accused Sanjeev and others on the identification of Munna (PW-6) husband of the

prosecutrix. This clearly shows that on the identification of the accused by husband of the prosecutrix they were arrested by the police and it cannot be said to be a case of wrong identification. Moreover, the learned trial court had also referred to the testimony of DW-1 Harjinder Singh who has clearly stated that the accused are also residents of same village i.e. village Khanpur and their residential houses are in close proximity to the papaya orchard. Thus it is clear that the prosecutrix and her husband were living in the same village near the houses of the accused persons for the last 5 months and the accused therefore cannot be said to be totally strangers whose identity was known to the prosecutrix's husband who had therefore gone to the house of their parents to make complaint against the act of the appellant and his other co-accused.

Coming to the fact that in the MLC the prosecutrix had not mentioned the names of the alleged accused persons when she was medically examined on 25.3.2005 at 2.30 p.m. there is nothing as to who had given the history of the case and before her examination on 25.3.2005 she had already lodged the report with the police on 24.3.2005 in which the names of appellant and others were mentioned and mere non mentioning of their names in the MLC Ex.PW1/A is not sufficient to disbelieve the statement of the prosecutrix. This plea was considered by the learned trial court also and reasons have been given in this regard also.

From the above discussion of the evidence it is clear that the appellant and his co-accused were not strangers to the prosecutrix and her husband since they were living in the same village and their names were learnt by the prosecutrix on the next day and the names of the appellant and his co accused as well as name of their village were also mentioned by the prosecutrix in her statement to the police under Section 154 Cr.P.C. when report was lodged on the third day. It is not such a case where it can be said that since no test identification parade was conducted

it proves fatal for the prosecution story since there was no question in regard to mistaken identity of the appellant and his co-accused.

Coming to the evidence I have already mentioned above that there is a statement of PW-5 prosecutrix in which she had clearly stated that she was raped by appellant and his companion whereas the third accused kept her husband captive during this time and she was raped inspite of her protest that she was pregnant for the last five months which observations were also made by the Medical Officer in Ex.PW1/A. It is therefore clear that the prosecutrix statement coupled with the statement of her husband clearly proves that rape was committed by the appellant and there are no infirmities or contradictions in the statements of the prosecutrix and her husband as PW-6 Munna to hold that their statements cannot be relied upon. The defence plea taken by the appellant and that of his co-accused that they complained to Panchayat Pardhan about the behaviour of the prosecutrix since persons used to visit her house does not stand substantiated or is not even sufficient to raise a doubt in the mind of the court that this version may be correct. In this regard, the accused persons had examined DW-1 Harjinder Singh, Pradhan of the Panchayat at the relevant period who stated that the prosecutrix and her husband were living in Papaya orchard and he came up with a plea that she was a lady of easy virtue and many outsiders used to visit her house. He also stated that the villagers were annoyed with her because of her activities. The deposition of the DW-1 is oral in this regard. There is nothing on record to show that any complaint was received in writing that he went to the prosecutrix and her husband and complained to them about their behaviour. DW-1 the then Pradhan is from the village who has every reason to depose in favour of the appellant and his co-accused who are from the same village and he rather gave a clean chit that they bear good moral character and 2-3 times they complained to him against the prosecutrix. Neither any dates were mentioned nor any independent witness was mentioned and nor there is anything on record to show that

he advised the prosecutrix and her husband to behave properly or stop indulging in such activities. No resolution was passed by the Panchayat in this regard against the prosecutrix and her husband as admitted by him and there is nothing in the statement of DW-1 to raise doubt in the mind of court that his version may be correct. Moreover, the prosecutrix and her husband had come from a far of village in Uttar Pardesh to earn their livelihood and from the perusal of evidence it cannot be belied that they wee indulging in unfair activities and therefore they had a grievance against the appellant who had made a complaint against them. They are from the poor strata of society and had come to ear their livelihood and not to wrongfully implead the appellant and others just to settle their score against them.

The ocular version of the prosecutix and her husband stands duly corroborated from medical evidence and the identity of the appellant stood established and as such the findings of the learned trial court holding the appellant guilty and sentencing him to rigorous imprisonment for six years and a fine of Rs.10,000/- for the offence under Section 376(2)(e)(g) IPC and rigorous imprisonment for three years and a fine of Rs.3,000/- for the offence under Section 452 IPC and in default of payment of fine imposed under Section 376(2(e)(g) IPC to undergo further rigorous imprisonment for six months, are affirmed.
A copy of this judgment be given to the appellant free of cost through the Superintendent jail.

April 12 ,2007(g) **(V.K.Ahuja),J.**